

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO. 618 OF 2023

(Arising from Land Case No.41 of 2023)

ALEX MSAMA MWITA.....APPLICANT

VERSUS

THE COMMISSIONER FOR LANDS.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

REGISTRAR OF TITLES.....3RD RESPONDENT

**THE OFFICE OF THE REGIONAL ADMINISTRATION AND LOCAL
GOVERNMENT.....4TH RESPONDENT**

RULING

11th October, 2023 & 15th November, 2023

L.HEMED, J.

It was on 29th May 2023 at 9:00 AM, when Land Case No.41 of 2023 was called for first pre-trial conference. On the particular day, the Plaintiff/applicant and his advocate failed to avail themselves before the court, consequently thereof the said matter ended up being dismissed under Order VIII Rule 20(1)(a) of the Civil Procedure Code, [Cap 33 RE 2019] on account of non-appearance.



It appears that the Applicant herein, **ALEX MSAMA MWITA** got aggrieved by the dismissal order. However, he could not do anything until on 22nd day of September 2023 when he lodged this application through the service of his advocate, **Mr. Augustine Mathern Kusalika**, seeking for extension of time to apply for restoration of Land Case No.41 of 2023.

The respondents, COMMISSIONER FOR LANDS, THE ATTORNEY GENERAL, REGISTRAR OF TITLES and THE OFFICE OF REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT, through the Counter Affidavit deposed by one Stanley Mahenge, State Attorney, challenged the application. Due to the tight schedule of the court, on 11th October 2023, in the presence of **Mr. Augustine Kusalika**, learned advocate who represented the Applicant and **Ms. Luciana Kikala**, learned State Attorney, it was directed the matter to be argued by way of written submissions. Submission in chief was to be filed by 18th October 2023 and reply thereof was to be presented for filing on or before 25th October 2023. The rejoinder submission if any, was to be lodged by 1st November, 2023.

Until 13th November, 2023 when the file was placed before me to compose this ruling, the respondents had not filed their written submissions. It was only the Applicant who, through his advocate, Mr.



Kusalika, filed submission in chief. This ruling is therefore based mainly on the submission of the applicant.

The 1st ground stated by the applicant is that on 29th May 2023, the counsel for the Applicant attended Commercial Case No.9 of 2023 which was also scheduled for the first pre-trial conference before Hon. A. Mbagwa,J and was conducted and concluded at 11.00 AM. He stated that when he came to attend Land Case No.41 of 2023, the Clerk informed him that the suit was already dismissed. He added that the applicant's advocate non-appearance on the fateful date was not occasioned by negligence but because he was appearing before his Lordship A. Mbagwa, J.

It was also argued by the counsel for the applicant that after the dismissal order, the application for restoration was prepared and filed in the court filing system but was rejected on the reason that the impugned Order was not attached to the application. The learned counsel for the Applicant submitted further that after a long follow up of the afore stated dismissal order, he was supplied with it on 18th September,2023. In other words, the applicant is trying to state that the delay in filing the application for restoration was occasioned by the delay in supply of the Order.



To substantiate his arguments, the learned counsel for the Applicant relied on the decision of the Court of Appeal of Tanzania in **Yusufu Same and Hawa Dada vs Hadija Yusufu**, Civil Appeal No.1 of 2002 that the court may grant an application for extension of time basing on promptness factor. In the opinion of the counsel for the Applicant, the applicant herein acted promptly and diligently when he filed the application for restoration on 29th May,2023. In his view, the said diligence of the Applicant is enough to be considered by the court in determining the application for extension of time. He fortified his argument with the decision of the Court of Appeal of Tanzania in **Rutagatina C.L v Advocates Committee & Clavery and Mtindo Ngalapa**, Civil Application No.21 of 2001, on consideration of the application promptly lodged.

Having gone through the affidavit and the submission in support of the application, the question is whether the application is meritorious. It should be noted that applications to set aside orders made under Order VIII Rule 20(1) of the Civil Procedure Code, [Cap 33 RE 2019] like the one at hand have to be lodged in Court with fourteen (14) days from the date of the order. In the instant matter, the impugned order was made on 29th May 2023, therefore, the application to set aside the dismissal order ought



to have been lodged by 12th June 2023. Being out of time, the Applicant preferred this Application which was lodged on 22nd September 2023, that is after more than 52 days from the date of the impugned order. Section 14(1) of the Law of Limitation Act, [Cap.89 RE 2019], under which the application has been made, provides thus:-

*" Notwithstanding the provisions of this Act, the court may, for any **reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application,** other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*(emphasis Added)**

From the above-cited provision, the applicant is obliged to demonstrate sufficient cause for the delay. What amounts to sufficient cause has not been defined by any statute. Case law has set the guiding principles or factors which aid the court in determining whether or not the applicant has shown good and sufficient cause. For instance in **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application



No.2 of 2010, the Court of Appeal underlined the following guiding factors, that:-

"(i) The applicant must account for all the period of delay;

(ii) The delay should not be inordinate;

(iii) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;

(iv)..."

Let me start with the first ground advanced by the learned counsel for the applicant that, on the fateful date he was also attending a commercial case before Hon. Mbagwa,J. I have noted from the proceedings of Land Case No.41 of 2023 that the advocate of the Applicant, Mr. Augustine Kusalika was aware that Land Case No.41 of 2023 was to be called on the fateful date at 9:00 AM. The learned advocate opted not to notify the court about his attendance in another matter. His choice of not informing the court had the implication of desiring the consequences thereof. It should be considered that, a person who fails to attend a matter which he/she is aware of without notice, if the matter gets dismissed, the application to set aside, apart from demonstrating good



cause, must as well demonstrate the cause for not giving notice of absence to the court. In the present case, the applicants never gave notice of absence to the court. I have also gone through the entire affidavit deponed by Augustine Kusalika, advocate of the applicant, I could not find any deposition on the cause for his failure to notify the court about his absence on the fateful date.

Additionally, on the date Land Case No.41 of 2023 was dismissed, the Plaintiff was not there too. In the instant application, it has not been stated what happened to the Plaintiff/applicant that caused him not to attend the matter. I am of the firm view that, the applicant intended the consequence of the dismissal for failure to attend his case. If the applicant would have been serious with his case, he would have attended the matter and inform the court of what happened to his advocate, so that the matter would have been adjourned. The absence of the applicant and his advocate on the fateful date implies the intended consequence thereof.

From the foregoing, I find that the ground of the applicant's advocate being attending a commercial case before Hon. A. Mbagwa, J. to be an insufficient cause to warrant this court extend time for the applicant to apply to set aside the dismissal order.



In the affidavit and submissions in support of the application, the applicant's advocate advanced a ground that immediately after the dismissal order on 29th May 2023, the advocate of the applicant lodged in the system the application to set aside, but it was rejected on account of failure to attach a copy of the dismissal order. I am of the firm view that, since the said application was lodged by an advocate, then, failure to attach the impugned Order in the said application to set aside constituted negligence of the highest degree. I am holding so because it is an elementary knowledge to any legal trained mind that in any application to challenge an order or decision of the court, such impugned order or decision must be attached thereto.

I am astonished, why the learned counsel decided to lodge an application for restoration of Land Case No.41 of 2023 prior to obtaining the dismissal order! In the circumstance of this case where the applicant negligently opted to lodge a defective application, which ended up being summarily rejected, cannot be considered as promptness. I consider the act of the learned advocate of lodging an application without an impugned order attached to it as a negligence action worthless to rely upon to grant the instant application.



Another ground pointed out by the counsel of the Applicant in both the affidavit and the submissions in support of the application is that the impugned Order was supplied to him late, that is on 18th September, 2023. The learned counsel however, has not proved his efforts to follow up for the supply of the dismissal order. I have noted from the affidavit deponed by one Augustine Kusalika, in paragraph 6, thus:-

*"6. That after a long follow up of the afore stated order of dismissal on 18th September, 2023 the Court provided the Applicant with the proceedings and order of the dismissal which indicates that the same was dismissed on 29th May 2023. Copies of proceedings of Land case No. 41 of 2023 and order of dismissal order are hereby attached and marked as collectively **Annexed GF-3** and the leave this Honourable Court is sought to refer to it as a part of this Affidavit." (sic)*

In the affidavit aforesaid, it was asserted that after a long follow up on 18th September 2023, the applicant was supplied with the copies of the dismissal order and proceedings. Going through the entire affidavit deponed by Augustine Kusalika, there is no proof if the applicant had applied for a copy of the dismissal order as he never annexed to it a letter



to reveal that he applied for the said copy. He also failed to annex reminder letters to prove that he made follow-up of the said copies of the dismissal order and proceedings. In the absence of such letters, the court has the right to draw inference that the applicant never applied for the copy of the dismissal order nor did he make follow-up. In the absence of the reminder or follow-up letters, the statement '**a long follow up**' stated in the affidavit becomes hollow and not worth to trust. The applicant was thus sloppy in pursuing his matter.

I have also gone through the entire affidavit in support of the application and found that the Applicant has not stated anything as to what he was doing from 29th May 2023 up to 22nd September,2023. In other words, the applicant has failed to account for each day of the delay. This is contrary to what was held by the Court of Appeal of Tanzania in **Dar es Salaam City Council vs S.Group Security Co.Ltd**, Civil Application No.234 of 2015, that:-

"As a matter of general principle, it is always in the discretion of this court to grant extension of time, but the instance which this court has consistently taken is that in an application for extension of time,



the applicant has to account for every day of delay.”

In the final analysis, I find that the applicant has failed to demonstrate good and sufficient cause for the delay. Having shown no sufficient cause, the court has no option other than refusing the application. In the upshot, the entire application is dismissed with costs. It is so ordered.

DATED at DAR ES SALAAM this 15th November 2023



L. Hemed
L. HEMED

JUDGE